

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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Charles Daniels,

Petitioner,

-v-

Superintendent James Conway and
Attica Correctional Facility.

Respondents.
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06 CV 11457 (BSJ)

ORDER

BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

Before the Court is the objection of Habeas Petitioner Charles Daniels ("Petitioner" or "Daniels") to the Report and Recommendation ("R&R") of Magistrate Judge Frank Maas recommending the denial of Daniels' Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. For the following reasons, the Court adopts the Report and Recommendation, overrules Daniels' objections, and DENIES the Petition.

LEGAL STANDARD

When a magistrate judge has issued findings or recommendations, the district court "may accept, reject, or modify [them] in whole or in part." 28 U.S.C. § 636(b)(1)(C). The Court reviews de novo any portions of a Magistrate Judge's R&R to which a petitioner has stated an objection. 28 U.S.C. § 636(b)(1)(C); see United States v. Male Juvenile, 121 F.3d 34,

38 (2d Cir. 1997). "Where no objections are filed . . . the court reviews the report for clear error." Brown v. Ebert, No. 05 Civ. 5579, 2006 WL 3851152, at *2 (S.D.N.Y. Dec. 29, 2006) (citing Gardine v. McGinnis, No. 04 Civ. 1819, 2006 WL 3775963, at *4 (S.D.N.Y. Dec. 20, 2006)).

DISCUSSION¹

Petitioner's habeas corpus petition challenged New York's discretionary persistent felony offender statutes, New York Penal Law Section 70.10 and N.Y. Crim. Pro. Law §400.20. Judge Maas submitted his R&R on January 15, 2009 and recommended that the petition be denied. Petitioner requested, and Respondent agreed, to stay the matter pending the outcome of a series of cases before the Second Circuit that would resolve the merits of the question presented here. The Court granted Petitioners request and stayed the matter on January 29, 2010. On October 18, 2010 the Second Circuit ruled and held that the New York Court of Appeals' decisions upholding the constitutionality of the state's discretionary persistent felony offender provisions were not contrary to, or unreasonable applications of, the United States Supreme Court's decisions in Blakely v. Washington, 542 U.S. 296 (2004), and Cunningham v. California,

¹ The facts and procedural history of this case are set forth in detail in Magistrate Judge Maas' Report and Recommendation, familiarity with which is presumed.

549 U.S. 270 (2007). Portalatin v. Graham, 624 F.3d 69 (2d Cir. 2010). In light of this decision the Court lifts the stay.

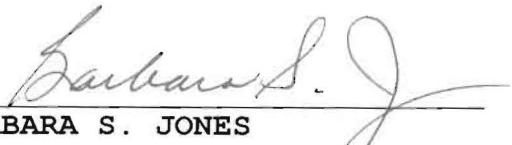
On October 22, 2010 Daniels filed an objection with the Court to Judge Maas' R & R that re-asserts the same arguments raised in Daniels' petition. Petitioner's objection concedes that the Portalatin decision is binding on this Court and holds contrary to their position. In light of the Portalatin decision and having reviewed the R&R for clear error, the Court finds Magistrate Judge Maas' R&R thorough, well-reasoned and not clearly erroneous. Accordingly, the Court adopts Magistrate Judge Maas' recommendation that the Petition be dismissed.

CONCLUSION

For the foregoing reasons, the Court adopts the Report and Recommendation of Magistrate Judge Frank Maas in its entirety and DENIES Daniels' Petition for a Writ of Habeas Corpus. Because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. 28 U.S.C. § 2253; see United States v. Perez, 129 F.3d 255, 260 (2d Cir. 1997). Pursuant to 28 U.S.C. § 1915(a)(3), any appeal taken from this order would not be taken in good faith.

The Clerk of the Court is directed to close this case.

SO ORDERED:



BARBARA S. JONES
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
March 7, 2011